IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 3820 OF 2004

IN

CRIMINAL APPEAL NO. OF 2004

Arvind Tejraj Jain .. Applicant

versus

Hemant Mishra & anr. .. Respondents

...

Mr.Jayesh B. Kocheta for the applicant.

Mr.Abhay Pande for the respondents.

CORAM : V.M. KANADE, J

DATED : 29th October 2004.

P.C:-

1. Leave granted. Taken up by consent for hearing forthwith.

2. The applicant is challenging the judgement and order passed by the trial Court whereby his application was dismissed for want of prosecution.

The applicant has produced the roznama from which it can be seen that the complainant and his Advocate had remained present from time to time. The accused had remained absent on number of dates. Therefore, application was made for issuance of non bailable warrant. Thereafter, on 15th September 2003, the said non bailable warrant was cancelled and on 9th October 2003, the case was dismissed for default.

3. The learned Judge has observed that complainant is not diligent in conducting the case against the accused and therefore, it is dismissed. From the roznama, this observation of the trial Judge does not appear to be true as number of dates were given by the trial Court itself as it was busy in other matters. This is a fit case according to me for setting aside the order of dismissal of default. The impugned order is set aside.

4. Appeal is allowed. The matter is remanded back to the trial Court. The learned Magistrate is directed to expeditiously dispose of the criminal case within a period of six months.

V.M. KANADE, J